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There are court cases that discuss what constitutes disability under section 72(m)(7) of the Code. The one that does a nice summary is a Bankruptcy case, *In Re Black* 204 BR 701 (1996), (copy attached), that cites among other cases *Dwyer v. Commissioner*, 106 T.C. 337 (1996) (Copy attached).

Section 72(m)(7) provides:

(7) Meaning of disabled. -- For purposes of this section, an individual shall be considered to be disabled if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration. An individual shall not be considered to be disabled unless he furnishes proof of the existence thereof in such form and manner as the Secretary may require.

S. Rept. 93-383, supra at 134, 1974-3 C.B. (Supp.) at 213 states that "Generally it is intended that the proof [of disability] be the same as where the individual applies for disability payments under social security."

The regulations, promulgated pursuant to the statutory authorization contained in section 72(m)(7), provide that an individual will be considered to be disabled if he or she is unable to engage in any "substantial gainful activity" by reason of any medically determinable physical or mental impairment that can be expected to result in death or to be of long-continued and indefinite duration.

An individual will not be deemed disabled if, with reasonable effort and safety to himself, the impairment can be diminished to the extent that the individual will not be prevented by the impairment from engaging in his customary or any other comparable substantial gainful activity. Section 1.72-17(f)(4) of the regulations. Thus, the individual has to establish that he was not able to work in the year of the distribution at an activity comparable to the one in which he customarily engage, and if he can meet the criteria of the regulations he would be considered disabled as defined in section 72(m)(7). See *Dwyer v. Commissioner*, 106 T.C. 337 (1996). I think the *Dwyer v. Commissioner* case is applicable to your case.

If you have any other questions you can call me at